

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: UNITEDHEALTH GROUP, Federal Case No.: 0:06-cv-01216  
INCORPORATED, SHAREHOLDER State Case No.: 27-cv-068085  
DERIVATIVE LITIGATION

TRANSCRIPT

OF

PROCEEDINGS

(FINAL SETTLEMENT HEARING)  
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The above-entitled matter came on for hearing  
before Judge James M. Rosenbaum and Judge George F.  
McGunnigle, on February 13th, 2009, at the United States  
District Courthouse, 300 South Fourth Street, Minneapolis,  
Minnesota 55415, commencing at approximately 11:00 a.m.

CALIFORNIA CSR NO.: 8674

ILLINOIS CSR NO.: 084-004202

IOWA CSR NO.: 495

RMR NO.: 065111

APPEARANCES

CHESTNUT & CAMBRONNE, 222 South Ninth Street, Suite 3700, Minneapolis, Minnesota 55402 by JACK L. CHESTNUT and KARL L. CAMBRONNE, Attorneys at Law; and

COUGHLIN, STOIA, GELLER, RUDMAN & ROBBINS, LLP, 655 W. Broadway, Suite 1900, San Diego, California 92101, by RAMZI ABADOU and ANDREW BROWN, Attorneys at Law; and

BERNSTEIN, LITOWITZ, BERGER & GROSSMANN, LLP, 1285 Avenue of the Americas, 38th Floor, New York, New York 10019, by C. CHAD JOHNSON, Attorney at Law, appeared as counsel on behalf of federal court plaintiffs.

HEAD, SEIFERT & VANDER WEIDE, 333 South Seventh Street, Suite 1140, Minneapolis, Minnesota 55402-2421, by VERNON J. VANDER WEIDE, Attorney at Law; and

GARDY & NOTIS, LLP, 440 Sylvan Avenue, Englewood Cliffs, New Jersey 07632, by MARK C. GARDY, Attorney at Law, appeared as counsel on behalf of state court plaintiffs.

DORSEY & WHITNEY, LLP, 50 South Sixth Street, Suite 1500, Minneapolis, Minnesota 55402-1498, by PETER W. CARTER and KATIE C. PFEIFER, Attorneys at Law, appeared as counsel on behalf of defendants, with the exception of defendants, William C. McGuire, David J. Lubben and William G. Spears.

1 APPEARANCES (Continuing)

2 FELHABER, LARSON, FENLON & VOGT, PA, 220 South  
3 Sixth Street, Suite 2200, by DAVID L. HASHMALL, Attorney at  
4 Law, appeared as counsel on behalf of defendant, William G.  
5 Spears.

6 BRIGGS and MORGAN, 2200 IDS Center, 80 South  
7 Eighth Street, Minneapolis, Minnesota 55402, by RICHARD G.  
8 MARK, Attorney at Law, appeared as counsel on behalf of  
9 defendant, David J. Lubben.

10 FLYNN, GASKINS & BENNETT, LLP, 333 South  
11 Seventh Street, Suite 2900, Minneapolis, Minnesota 55402, by  
12 STEVE W. GASKINS, Attorney at Law, appeared as counsel on  
13 behalf of defendant, Dr. William C. McGuire.

14 KELLY & BERENS, PA, 80 South Eighth Street,  
15 Suite 3720, Minneapolis, Minnesota 55402, by BARBARA P.  
16 BERENS, Attorney at Law, appeared as counsel on behalf of  
17 UnitedHealth Special Litigation Committee.

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1 THE CLERK: Your Honors, the matter on the  
2 calendar is Civil Number 06-1216 on the federal side; on the  
3 state side, Court File 27 Civil 068085.

4 Will counsel please stand and state their  
5 appearances for the record.

6 MR. CAMBRONNE: Good morning, your Honors.  
7 Karl Cambronne appearing on behalf of plaintiffs.

8 JUDGE ROSENBAUM: Good morning, Mr. Cambronne.

9 MR. JOHNSON: Good morning, your Honors. Chad  
10 Johnson of Bernstein, Litowitz on behalf of the St. Paul  
11 Teachers' Retirement Fund and five of the other institutional  
12 investor lead plaintiffs in the federal derivative action.

13 JUDGE ROSENBAUM: Counsel.

14 MR. VANDER WEIDE: Good morning, your Honors.  
15 Vern Vander Weide on behalf of the state action plaintiffs.

16 JUDGE MCGUNNIGLE: Good morning to all counsel.

17 MR. CHESTNUT: Good morning, your Honors. Jack  
18 Chestnut, Chestnut & Cambronne, on behalf of plaintiffs.

19 JUDGE ROSENBAUM: Mr. Chestnut.

20 MR. GARDY: Mark Gardy, Gardy & Notis, on  
21 behalf of state court plaintiffs.

22 JUDGE ROSENBAUM: Mr. Gardy.

23 MR. ABADOU: Good afternoon, your Honors.  
24 Ramzi Abadou of Coughlin, Stoi a, Geller, Rudman & Robbins on  
25 behalf --

1 JUDGE ROSENBAUM: You're just a tourist here  
2 today.

3 MR. ABADOU: I'm sorry, your Honor?

4 JUDGE ROSENBAUM: You're just a tourist here  
5 today.

6 MR. ABADOU: Well, we'll see, your Honor. We  
7 didn't expect to have a dog in this fight, but we'll see what  
8 happens.

9 JUDGE ROSENBAUM: Thank you.

10 MS. BERENS: Barbara Berens of Kelly & Berens  
11 on behalf of UnitedHealth Special Litigation Committee.

12 JUDGE ROSENBAUM: Is this the first time you've  
13 spoken on the record? No; but close.

14 MR. CARTER: Good morning, your Honors. Peter  
15 Carter on behalf of all the defendants, with the exception of  
16 Dr. McGuire, Mr. Spears and Mr. Lubben.

17 JUDGE ROSENBAUM: Counsel.

18 MS. PFEIFFER: Good morning. Katie Pfeiffer of  
19 Dorsey & Whitney on behalf of the same clients as Mr. Carter.

20 MR. HASHMALL: Good morning, your Honors. David  
21 Hashmall for Mr. Spears.

22 MR. MARK: Good morning, your Honors. Richard  
23 Mark, Briggs and Morgan, on behalf of David Lubben.

24 MR. GASKINS: Good morning, your Honors. Steve  
25 Gaskins on behalf of Dr. McGuire.

1 JUDGE ROSENBAUM: Greetings to all counsel.

2 JUDGE MCGUNNIGLE: Good morning, everybody.

3 JUDGE ROSENBAUM: I think you may be confident  
4 we have read and reviewed the materials we received. I  
5 received an objection literally in last night's e-mails. I  
6 see some heads nodding, so I take it copies have been  
7 delivered. So I've got a copy of that. Other than that, you  
8 may proceed.

9 MR. CAMBRONNE: Your Honors, I'd ask Barbara  
10 Berens from the SLC to lead off.

11 MS. BERENS: Thank you, your Honors. I would  
12 like to deal with the final approval piece of what's before  
13 your Honors. The SLC and the plaintiffs' counsel have joined  
14 in a motion for final approval of the settlement that was  
15 reached in 2007 in this matter. Most of the legal arguments,  
16 I believe, were set forth in our original preliminary  
17 approval hearing. And in your order granting preliminary  
18 approval, you collectively made the findings that I believe  
19 are required for purposes of granting final approval of the  
20 settlement itself. I will not be addressing the attorneys'  
21 fees issue unless you have some questions. Mr. Cambronne is  
22 going to be handling that.

23 After the Minnesota Supreme Court answered the  
24 certified question that Judge Rosenbaum sent over to the  
25 Minnesota Supreme Court, I believe there's little left at

1        this point to be considered, given the findings that were set  
2        forth in your joint order of preliminary approval, and I'll  
3        just basically reiterate those for the record. Basically  
4        your Honors found that this SLC met both prongs of the test  
5        that was set forth by the Minnesota Supreme Court;  
6        specifically, that the SLC was disinterested and independent;  
7        and that secondly, the SLC procedures were adequate,  
8        appropriate and performed in good faith. And the preliminary  
9        approval order set forth the various factors on which the  
10       courts relied to make those findings. And further, the  
11       preliminary approval order, I think, dealt with the issue of  
12       what, if anything, the state and federal procedural rules had  
13       to do with the approval process. And the preliminary  
14       approval order found that the SLC's work was also in full  
15       accord with the respective procedural rules, state and  
16       federal. And, finally, I think a key holding in your  
17       preliminary approval order was that given that the SLC met  
18       both prongs of the test that the governing procedural rules  
19       merely required that the settlement be approved after notice  
20       to the shareholders. At this point, shareholder notice has  
21       been sent out in accordance with what was set forth in the  
22       preliminary approval order. There has been, as far as we  
23       know, the one objection lodged.

24                    JUDGE ROSENBAUM: And that was a fee objection  
25       rather than a substantive objection.

1 MS. BERENS: Exactly, your Honor. That's what  
2 I was going to say. It seems to focus solely on the fee  
3 petition piece of this and not the underlying settlement with  
4 the individuals.

5 JUDGE ROSENBAUM: How broadly was the notice  
6 disseminated?

7 MS. BERENS: It was disseminated various ways  
8 is my understanding. It was sent out by the company; there  
9 was also two Web sites set up at which various objectors, if  
10 there were any, or shareholders could lodge any sorts of  
11 objections. And my understanding is it went out at the  
12 appropriate time. And as of the date of the deadline that  
13 was set forth in the original procedures that the court  
14 approved, there had been no objection lodged. Now, I  
15 understand that the one objector has said that there was not  
16 adequate time in which to respond to the fee petition itself,  
17 although in the notice the caps were set forth. So even  
18 though the individual fee petitions had not been publicly  
19 disseminated at that point, my understanding is at least the  
20 caps were included in that shareholder notice that went out.

21 JUDGE ROSENBAUM: I thank you.

22 MS. BERENS: Again, everyone else involved in  
23 this settlement process -- other than I know Mr. Abadou may  
24 be reserving something for us. But as I stand here right  
25 now, this is a settlement that all the individual defendants



1 have signed off on, all the plaintiffs' counsel have signed  
2 off on, the SLC has signed off on, and the company has signed  
3 off on. Given your earlier findings in your order for  
4 preliminary approval and your earlier findings, the SLC, and  
5 in joint motion with plaintiffs' counsel, ask the courts to  
6 grant final approval of the settlement piece.

7 JUDGE ROSENBAUM: Thank you.

8 JUDGE MCGUNNIGLE: Thank you.

9 MS. BERENS: Thank you, your Honors.

10 JUDGE MCGUNNIGLE: Mr. Cambronne, will you be  
11 presenting the position of both the counsel for the federal  
12 plaintiffs and counsel for the state plaintiffs?

13 MR. CAMBRONNE: Just the federal plaintiffs.

14 JUDGE MCGUNNIGLE: All right.

15 MR. CAMBRONNE: May it please the court, I am  
16 Karl Cambronne, I am appointed as lead counsel on behalf of  
17 the federal derivative plaintiffs in this action. And I just  
18 want to echo and fully, completely support what Barbara  
19 Berens just told the court about this being a settlement that  
20 we indeed do endorse, we do sign off on. You've been given a  
21 lot of paper telling you about the history of this  
22 litigation. I'm not going to repeat any of that. I am going  
23 to point out, though, that notwithstanding maybe the  
24 miscaptioning of that filing of last night, there are no --  
25 of all the shareholders in this case, no people who are

1 standing in opposition to the settlement. I can tell you,  
2 also, in response to one of your questions, Judge Rosenbaum,  
3 that part of the notice was 1-800 numbers. And other than  
4 getting calls with practical questions -- for instance,  
5 "Where do I send the claim form" -- that was a big one --  
6 type of thing, there have been -- they were all very -- just  
7 interested, asking practical questions. But nobody stood in  
8 opposition to any issue in the phone calls that we received.  
9 So I'm confident that every lawyer in this room and everybody  
10 here is going to say this is a good settlement and you ought  
11 to approve it. Now, the settlement, of course, is something  
12 I want to talk to you a little bit more. But it's two-phased  
13 in the sense that part of it's monetary, part of it's relief  
14 that has to do with governance issues -- and I'll get to that  
15 in just a moment. But with that in mind, I don't think there  
16 needs to be more discussion on the issue of the settlement  
17 per se. I'm rising now to talk to the court about the matter  
18 of fees and --

19 JUDGE ROSENBAUM: Let's talk about it for a  
20 moment, the numbers of dollars -- greenback dollars that were  
21 shipped back to the corporation were how much?

22 MR. CAMBRONNE: Well, it varies. And I have --  
23 for instance -- and there was some misunderstanding about  
24 that in the filing of last night. For instance, in  
25 Dr. McGuire's case -- and I'm looking at pages 60 and 61 of

1 the SLC report -- for instance, I believe greenback dollars  
2 would be returning the 91.3 million-dollar executive  
3 retirement plan. I believe that greenback dollars would be  
4 surrender of 8.1 million dollars in executive savings plan,  
5 relinquishing various other things, too, that are just sort  
6 of that nature. There was -- Mr. Spears -- I forget the  
7 number there, but -- and Mr. Lubben, also -- both paid  
8 dollars. Mr. Lubben, in particular, I think was 20-some  
9 million dollars, that type of thing. I could -- but the  
10 actual -- to answer your question, you add them all up,  
11 starting at page 60 of the SLC report, you'll see it all  
12 broken down.

13 JUDGE ROSENBAUM: Thank you.

14 MR. CAMBRONNE: Okay. This has been a  
15 three-year fight. And it's important that you see, I think,  
16 certain turning points that occurred during the course of the  
17 litigation. I want to give you a little flavor for some  
18 things that had happened here. Early on in the litigation,  
19 after we were given the green light to go ahead and engage in  
20 discovery, sought from defendants really information that  
21 would have simplified and made more efficient our progress in  
22 the case. It was in the nature of the summaries of  
23 interviews, and that type of thing, that had been developed  
24 by the company's investigative committee. Not the SLC, but  
25 the investigative committee. Now, the company made a

1 conscious decision to oppose that request. They said it's  
2 work product. Magistrate Judge Noel agreed with that  
3 argument. And as a consequence, what we were left to have in  
4 this particular case was a big pile of documents. And by  
5 "big pile," I mean millions. That was a decision made early  
6 on by the company and how they would litigate with us, if you  
7 will, in this case. And I'm not criticizing that decision,  
8 but I'm noting the irony now, to stand before you and say,  
9 "Why did you look at all the documents?" The SLC was also  
10 doing some looking at documents, but they had the benefit of  
11 a big efficiency, and that is, instead of serving discovery,  
12 it was matter of picking up the phone and asking the company,  
13 "I want to talk to Witnesses 'A,' 'B,' 'C' and 'D,' and give  
14 me this" --

15 JUDGE ROSENBAUM: Well, the company didn't have  
16 a right to object to that. That was their SLC.

17 MR. CAMBRONNE: That's right. That's right.  
18 This gets to the point of the comparison I find in the brief  
19 in opposition that was filed by the defendants in this  
20 matter. They would like to compare a fee request from the  
21 plaintiffs in this matter with what the fees paid to the SLC  
22 were and that's like apples and oranges. You can't tell me  
23 that when you have full-blown, absolute complicity, if you  
24 will, and cooperation shown the SLC -- and they charged --  
25 and they had experts and they charged a certain amount of

1 money. Then you look at it from the other perspective, where  
2 we are in litigation. That is, we are opposed. We are  
3 filing motions for summary judgment, we are filing motions to  
4 compel, we are rolling up our sleeves, looking at documents  
5 and only raw data. That's kind of the cards we were dealt --  
6 and that's what normally happens in a piece of litigation.  
7 And that's what we did. So my point is that the comparison  
8 of us to the SLC is not apt. The more likely comparison is  
9 how we -- you know, what we had to deal with as litigators in  
10 this whole matter. Long about -- and I don't know the date  
11 here -- but we were off and running on discovery -- and it was  
12 document discovery initially. I along with Mr. Carter -- and  
13 I believe he would agree with this -- said that, "We're not  
14 going to" -- we agree. "We're not going to start a  
15 deposition program of our own." But the quid pro quo for  
16 that is that we're going to engage in mediation. We're going  
17 to try to solve this case as opposed to, you know, doing it  
18 the scorched earth fashion. We could have noted every  
19 defendant and everybody else and started that process. We  
20 thought, as officers of the court and good lawyers, that  
21 maybe the better approach would be to do something else.  
22 That's when we walked into the notion, "Let's get a  
23 high-class, good mediator and see if we can solve this  
24 problem." And as the court well knows, we retained the  
25 services of Lane Phillips. One fact that I think is very

1 important, because it's a very expensive thing, the mediation  
2 that was conducted in this case was paid for by the  
3 plaintiffs' counsel and defendants' counsel. It wasn't paid  
4 for by the SLC. We advanced the money to have multiple  
5 sessions with this very qualified mediator, not anybody else.  
6 We started the thing, and we paid for it going on also. But  
7 the important thing here -- and this is new ground, as far as  
8 I'm concerned, in derivative litigation -- the other thing we  
9 did was I called Barbara Berens, and I said, Barbara, this is  
10 what we want to do, we want to start a mediation, and we'd  
11 like the SLC to participate in that mediation, because we  
12 understand, and respect, 'A,' the power of an SLC from a law  
13 point of view in the state of Minnesota, and we certainly  
14 respect the individual SLC members in this particular matter  
15 and their particular contributions that can be made. Well,  
16 anyway, we make this call. We invite the SLC in. They  
17 didn't hesitate a bit. They said, Okay. Good idea. Let's  
18 do it. So all of a sudden we have a triparte mediation that  
19 lasted a long time, many sessions, and that sort of thing.  
20 But it's triparte. Your Honor, during the course of that  
21 process, we're engaged actively. And I'm just going to hold  
22 something up as a visual -- but I'll give it to the court, if  
23 you want, for in-camera review -- these are the memos that we  
24 sent to the SLC giving them our views of the law, the  
25 questions, liability, money, all kinds of things. It wasn't

1 as if we were just sort of sitting in a corner, kind of  
2 watching a process unfold. We were very active in it. Not  
3 only we as lawyers, but our clients.

4 JUDGE ROSENBAUM: Well, let me pick up also --  
5 you've got tripartite. Was one of the parts bifurcated also  
6 which reads over to your brother Vander Weide?

7 MR. CAMBRONNE: Right. Right. And I'll add --  
8 I'll comment on that right now.

9 JUDGE ROSENBAUM: That's all right. He knows  
10 he ain't going to get a nickel from me.

11 MR. CAMBRONNE: That's right.

12 JUDGE ROSENBAUM: That comes over from the  
13 other side. But that's a different issue.

14 MR. CAMBRONNE: Well, rest assure that by the  
15 time this process got rolling, Vern Vander Weide and his  
16 colleagues in the state action were involved. They also had  
17 interaction with the SLC. They were also reviewing  
18 documents, that sort of thing. On the document, for  
19 instance, issue, this is all downloaded in some massive  
20 computer someplace, and you can segment documents and give  
21 them to certain people to review. Well, Vern and his crew  
22 got chunks of documents that was run out of my office. But  
23 everybody got piecemeal chunks of documents -- I shouldn't --  
24 it's huge amounts of documents for review. So they did  
25 indeed participate. But, anyway, we gave up -- not gave up

1 -- but we agreed to postpone the deposition process in this  
2 case if we could walk towards a meaningful settlement in this  
3 matter. And, of course, a meaningful settlement is here and,  
4 I think, universally agreed to as being the appropriate thing  
5 to have done. About a year ago, we came to the court with  
6 these settlements and said we ought to consummate the  
7 settlements and start a process of approval at that time.  
8 You sought, and we participated in, a process that took us  
9 all the way up to the Minnesota Supreme Court. And they have  
10 now pronounced what the law is. And that's all well and  
11 good. But during that period of time, of course, the PSLRA  
12 case is rolling along and they are doing things that happen  
13 in litigation -- they're engaging in their own discovery  
14 fights, they are taking depositions, and the like. Now, we  
15 could have, we could have -- because we didn't have an  
16 approval or even a preliminary approval of a settlement at  
17 that time -- decided to piggyback and do depositions with  
18 them, ask our own questions, or at least monitor the  
19 depositions that were being taken. We chose not to. We  
20 didn't think that was the proper thing to do. We did get  
21 transcripts as they were developed, all with an eye towards  
22 -- in the event this court decided not to preliminarily  
23 approve, we wanted to be able to hit the ground -- these  
24 people had -- all these defendants have been deposed. We  
25 needed to be able to be in a position to try this case, if it



1 was necessary. Last December -- a year ago last December, I  
2 remember you distinctly, your Honor, Judge Rosenbaum, asking,  
3 Well, what if I don't think this settlement is adequate?  
4 Well, a fair question. And that rings in our ears as we go  
5 forward, not having a settlement approved or preliminarily  
6 approved, for that matter, and therefore -- now we're  
7 criticized by counsel for, you know, summarizing depositions.  
8 Well, you know, when we are charged with the responsibility  
9 of representing our clients, we have to do the job that we're  
10 supposed to do when we're supposed to do it. I can tell you,  
11 your Honor, that we assembled a heck of a good team of  
12 competent, qualified, experienced lawyers in derivative  
13 litigation in this case, and we were opposed by a similarly  
14 competent, tenacious, good group of lawyers. We tried --

15 JUDGE ROSENBAUM: Mr. Cambronne, you said you  
16 are here to protect your clients. Who are your clients here?

17 MR. CAMBRONNE: The clients, your Honor, who  
18 retained us are various institutional shareholders and  
19 individuals. And we are, though, bringing the case -- I'm  
20 aware of this -- bringing the case derivatively on behalf of  
21 the company. We say, if I may --

22 JUDGE ROSENBAUM: There's an aspect of wheels  
23 within wheels here.

24 MR. CAMBRONNE: Right.

25 JUDGE ROSENBAUM: Your clients are the

1 defendants, at least on some level. I don't think they were  
2 always exactly aligned with you. And to some extent, then,  
3 since they're kin is the SLC, they were sort of your clients  
4 too.

5 MR. CAMBRONNE: I understand that. Hence, the  
6 unique and why they say complex nature of derivative  
7 litigation. The defendants per se were not our clients but  
8 the company. Trying to accomplish a result for the company.

9 JUDGE ROSENBAUM: The company's interest.

10 MR. CAMBRONNE: The company's interest, right.  
11 And we are mindful of that.

12 JUDGE ROSENBAUM: Or shall we say a perfect  
13 board of directors that didn't exist until Ms. Berens came  
14 along.

15 MR. CAMBRONNE: Well, that -- okay.

16 JUDGE ROSENBAUM: I cast no personal thing.  
17 There's a gentleman with white hair back there. I don't know  
18 what it means when he puts up his finger. But he stuck his  
19 thumb in the air there.

20 MR. CAMBRONNE: I think he's a recovering  
21 lawyer, if you're looking at the same white-haired man as I  
22 am.

23 JUDGE ROSENBAUM: I think he's made a fine  
24 recovery. We'll move along.

25 MR. CAMBRONNE: Well, in any event, we

1 understand that, and that's why we are walking in a case --  
2 you know, Minnesota derivative law has been, may I say, a  
3 minefield for years, and we therefore --

4 JUDGE ROSENBAUM: We found it a broad avenue  
5 brightly lit.

6 MR. CAMBRONNE: Well, now it is. Now it is. I  
7 don't think there's much more discussion to be had after the  
8 UnitedHealth decision from our supreme court. But, in any  
9 event, we approached this matter knowing that the SLC --  
10 we're working with the SLC. We are mindful that they're very  
11 powerful under Minnesota law -- all SLCs are -- but in this  
12 particular case, the SLC, Judge Stringer and Judge Blatz are,  
13 you know, just beyond question the people that were the right  
14 personalities at the right time, and therefore, you know,  
15 what we tried to do is take care of this matter in a way that  
16 was efficient.

17 Now, let me talk about -- I don't want to  
18 ignore an elephant in the corner, either. We've asked you,  
19 Judge Rosenbaum, to award a 47 million-dollar fee in this  
20 case. And I'm not going to hide from saying that number.  
21 It's a lot of money. It's real money. And I'm not going to  
22 be naive enough to think that anybody in this courtroom or  
23 elsewhere wouldn't think it would be. It is a situation,  
24 your Honor, where we have brought to you, and we'll give you  
25 more information, if you want, like our interaction with the

1 SLC, about the types of things that we did here. The fact of  
2 the matter is the SLC was constituted; the investigatory  
3 committee that predated them, WilmerHale, was constituted,  
4 all as a result of the actions that were initiated -- the  
5 derivative actions that were initiated in this particular  
6 case.

7 JUDGE ROSENBAUM: Now, Mr. Carter can certainly  
8 express himself -- he did so zealously -- but let me offer a  
9 couple of thoughts, one is there seems to be a suggestion  
10 that you would be seeking some kind of a multiplier for  
11 people who either should have been external to you, some sort  
12 of contract employees, and maybe some of your support  
13 mechanisms. Where are we with that?

14 MR. CAMBRONNE: Okay. On the support  
15 mechanisms, your Honor, there are people that -- I have names  
16 like -- and this is -- Chad Johnson from Bernstein, Litowitz  
17 is here to talk about that. They have super-duper paralegals  
18 in their office that kind of handle things that are complex  
19 and this sort, and it's a paralegal type of thing where,  
20 traditionally, courts here and elsewhere have awarded fees  
21 and multipliers for paralegals. There are experts, even, in  
22 those larger New York firms, like accountants and  
23 investigators, that type of thing, that are on staff and do  
24 help and benefit the collective activities here. And, yes,  
25 there are some of that there, but the justification is just,

1 as I said, these people are on staff on a full-time basis to  
2 help, if the need arises.

3 The other thing I'd like you to have in mind,  
4 your Honors, as we walk down this path is that we as  
5 derivative counsel are -- and I'm not saying anything unusual  
6 here -- we're the ones that are not paid in this case. I can  
7 tell you this, that there was a hundred and seventy-five  
8 million-dollar D & O policy in this case that was burned  
9 through long ago by professional fees on the defense side,  
10 whether it be accountants or lawyers, that sort of thing.  
11 And that all happened on a monthly basis during the course of  
12 the last three years. It didn't happen now or in the future.  
13 I don't begrudge that sort of a situation. I don't begrudge  
14 it in the least. But I think we have to understand that we  
15 as plaintiffs' lawyers who approach these matters have an  
16 enormous risk facing us in terms of what can happen in a case  
17 like this and what the results can be. And, hence, that's  
18 why the things that are unique in this case -- for instance,  
19 let's not do discovery, let's try to settle it. Let's look  
20 at summaries of documents as opposed to actually looking at  
21 all documents, that sort of thing. We tried to be efficient.  
22 I tried to delegate specific responsibility in my role as  
23 lead counsel here. And to the extent there's inefficiency,  
24 I'll take the responsibility for that. But we tried to be  
25 efficient, and I think, for the most part, we have been.

1                   Your Honor, I will conclude my remarks by just  
2           commenting on what is called an "Objection to the Settlement"  
3           that was filed last night. And the important thing, your  
4           Honor, for purposes of your looking at that objection is it's  
5           largely duplicative of what has already been said in timely  
6           filed papers by Mr. Carter's office.

7                   JUDGE ROSENBAUM: It appears that the author  
8           may have read Mr. Carter's brief.

9                   MR. CAMBRONNE: We even know, your Honor, that  
10          to complete -- down to misspelled words that were misspelled.  
11          There was the Shapiro, Haber & Urmy firm that's part of the  
12          lead counsel in this thing.

13                  JUDGE ROSENBAUM: You are not suggesting your  
14          brother misspelled something.

15                  MR. CAMBRONNE: Well, one word was misspelled  
16          and, fair enough, it happened to make -- the same misspelling  
17          finds its way into the objection of last night. Your Honor,  
18          it's hard to stomach, knowing the absolutely intense and  
19          arduous fight that has been going on for three years here,  
20          for somebody, who I've never heard of, I never even got a  
21          phone call from -- the only thing I heard was at 5:42 last  
22          night that he's objecting to our fees -- to have really,  
23          frankly, the audacity to come in and say -- challenge our  
24          effort here and that we ought to be paid in a particular  
25          fashion. We're comfortable leaving to you, with your

1       discretion, the whole matter of fees.

2                       I'm also going to say that the attorney -- not  
3       Randall Tigue, who's apparently just local counsel in this  
4       matter -- the attorney is a fellow by the name of Segal out  
5       of Ohio, and he's -- Edward Segal -- and he's no stranger to  
6       objecting to these matters. I'm going to, with the court's  
7       permission, hand to your staff a news article from last June  
8       that labeled Mr. Segal "One of the nation's most prolific  
9       serial objectors." This is what he does for a living. And  
10      if I may, I'll just hand it to your clerk.

11                     That was an article that appeared last June and  
12      it talked about, you know, what this fellow's business is  
13      doing the sorts of things that happened here. But the  
14      important thing, bringing it all back --

15                     JUDGE ROSENBAUM: This court would not be  
16      surprised to get an application for fees from him for the  
17      services which he had performed. I have received them in the  
18      past.

19                     MR. CAMBRONNE: I'd be willing to bet on that,  
20      your Honor. I think you're right. I think you're right.

21                     JUDGE MCGUNNIGLE: I didn't get to see that  
22      until this morning, when Judge Rosenbaum showed it to me, and  
23      that was probably because it was captioned only in the  
24      federal action, I believe.

25                     MR. CAMBRONNE: Right. And I --

1 JUDGE MCGUNNIGLE: So I don't think that he's  
2 objecting to Mr. Vander Weide's.

3 JUDGE ROSENBAUM: It didn't appear.

4 MR. CAMBRONNE: Yes. And I asked Mr. Vander  
5 Weide this morning if he had gotten anything in the state  
6 case and he assured me this morning that he had not gotten  
7 anything about it.

8 MR. VANDER WEIDE: One of the advantages of  
9 having a case that's not on the Internet.

10 JUDGE ROSENBAUM: Enjoy it. You're in the  
11 final moments, counsel.

12 MR. CAMBRONNE: Your Honor, the bottom line is  
13 he makes a number of, as far as I'm concerned, scurrilous  
14 accusations about a lot of things. The underlying claims,  
15 though, if you will, are covered in the brief that was filed  
16 in the other matter. This is nothing new, if you will, this  
17 objection of last night. It's sort of me tooing it. And  
18 I'll just leave it at that.

19 With that, your Honor, I ask that you approve  
20 the settlement, obviously. We're here because of that whole  
21 matter. And I think the fee is also worthy of granting.  
22 Thank you very much.

23 JUDGE ROSENBAUM: I thank you, counsel.

24 MR. VANDER WEIDE: Good morning, your Honors.  
25 Vern Vander Weide for the state court plaintiffs.



1                   To respond to your first question, Judge  
2       Rosenbaum, on the amount of greenback dollars, I don't want  
3       to get into the difference between cash accounting and  
4       accrual accounting with the court. I can't go much beyond  
5       those two terms before I get totally lost. But in Attachment  
6       Number 1 to the SLC's report, where there is this very handy  
7       summary of remediation -- it's Document 350-4 in the federal  
8       case, page 16 of 49. If you look in the heading that's "2007  
9       SETTLEMENTS," you'll see on the second line a number for  
10      "Employment Benefits Forfeited," which has the number of  
11      99.4, and, then, it has "Cash," 20.4. Both of those numbers  
12      Mr. Cambronne alluded to. Now, as far as I understand their  
13      plan, that would have been, over time, paid out in cash.  
14      So this is cash saved, not cash contributed. But it is cash  
15      saved in terms of the 99.4. So if you add those two  
16      together, it's approximately -- it's a hundred and twenty  
17      million dollars, which the SLC found had economic and  
18      accounting value, as did the SLC find, with its accounting  
19      experts, that the total value of all of the remediation that  
20      can be monetarily measured had a monetary value. And these  
21      numbers appear in UnitedHealth's financial statements, they  
22      appear in the income statement. I don't know what their  
23      effect is in the cash-flow statement. But on the income  
24      statement, when they had to restate their earnings, that was  
25      1.1 billion dollars. And believe me, the analysts and the

1 shareholders and everybody else who's interested, including  
2 the employees, as well as the board of directors, those are  
3 real numbers. They may not be cash in hand, somebody writing  
4 out a check, but they are very real numbers --

5 JUDGE MCGUNNIGLE: Does the fact that --

6 MR. VANDER WEIDE: -- in the scope of things.

7 JUDGE MCGUNNIGLE: -- something can be  
8 monetarily valued make that something a common fund?

9 MR. VANDER WEIDE: We believe, your Honor, that  
10 it can.

11 JUDGE MCGUNNIGLE: And I ask that because you  
12 are the -- of the counsel who are applying, you are the only  
13 one who's asking that the court apply a percentage of common  
14 fund rationale.

15 MR. VANDER WEIDE: That is correct, your Honor.  
16 The cases which decline, criticize or otherwise don't want to  
17 go along with awarding attorneys' fees, or very much, or  
18 lodestar multipliers, or what have you, saying that, Well,  
19 this is really -- it's not a common fund. It's not cash.  
20 It's a non-cash benefit. Those cases -- for example, the one  
21 cited by Mr. Carter in his brief, *Rosenbaum v. Macal ester*  
22 case --

23 JUDGE ROSENBAUM: I can assure you it was not  
24 one of mine.

25 MR. VANDER WEIDE: I didn't think so, your

1 Honor, but some --

2 JUDGE ROSENBAUM: I know I choked. I got very  
3 excited when I saw it.

4 MR. VANDER WEIDE: Some distant relative  
5 someplace, perhaps --

6 JUDGE ROSENBAUM: Who has disavowed me --

7 MR. VANDER WEIDE: -- must have been a  
8 plaintiff.

9 JUDGE ROSENBAUM: -- so many times. Okay.

10 MR. VANDER WEIDE: Must have been a plaintiff.

11 But, in any event, in that case there was a significant  
12 amount of corporate governance procedures, the so-called  
13 "therapeutic kind of relief," which the court said was not  
14 quantifiable. And it also mentioned it happened not to be  
15 not extraordinary. But, in any event, the cases that are  
16 critical of -- or -- don't want to award these multipliers,  
17 and what have you, or give an awful lot of credit, have to do  
18 with these kinds of things. Now, those things are present in  
19 this case. But this has not been the basis, certainly, for  
20 the state plaintiffs. And as I read the federal plaintiffs,  
21 they're basically basing their fee also on what the monetary  
22 value was. And all of these things have real value. And  
23 part of this comes from the unique nature of a derivative  
24 case we're not representing a class, where we're asking for  
25 some money because of some fraud damages.

1 JUDGE MCGUNNIGLE: Most of the cases you cite  
2 are class actions, though.

3 MR. VANDER WEIDE: Most of the cases are.  
4 There are some that are also derivative actions but had a  
5 cash component. That is correct. But none of these cases  
6 had the extent of monetary remediation. The problem is with  
7 these other things -- corporate benefits, corporate  
8 governance procedures -- you cannot put a money number on  
9 that like you can on the retirement benefits that were  
10 relinquished, on the stock options that were repriced, on the  
11 stock options that were canceled. All those things have real  
12 impact on the balance sheet. And I would submit that while I  
13 can't point you to a specific case, this case is  
14 extraordinary in a lot of ways. Mr. Cambronne has already  
15 alluded to some of them. But it truly is extraordinary in a  
16 lot of ways. And in a derivative case, a lot of the recovery  
17 will be of this noncash but real monetary, real measurable,  
18 real quantifiable value. And that's what we have here. It  
19 fluctuated. It even fluctuated on the date because there are  
20 two ways to figure these things and then it fluctuated  
21 because of what happened in the markets. But when all is  
22 said and done, at the end of the day, as we stand here today,  
23 we still have numbers that are real numbers. They aren't all  
24 in cash, that is true. Some is in cash; some is givebacks in  
25 terms of savings; and some is in the form of givebacks that

1 have monetary value. The *Hawkins* case --

2 JUDGE MCGUNNIGLE: So the answer to my question  
3 is "Yes," the fact that something can be monetarily valued  
4 makes it a common fund, is that what you're saying?

5 MR. VANDER WEIDE: We believe it's a -- well,  
6 it's a common fund in the sense that it was a benefit. I  
7 mean the commonality here, of course, is not a class. The  
8 commonality is really because it's the recovery on behalf of  
9 the corporation. So there's not a fund that's set up for a  
10 class of shareholders, that is correct. But the benefit that  
11 is measurable in real dollar terms, because it's laid out in  
12 spades in all of the paper, is a benefit which we believe  
13 should be analogized if two common fund cases. And we cited  
14 in our brief some authority for that proposition, where the  
15 courts have said that the common fund is not limited to class  
16 actions.

17 JUDGE MCGUNNIGLE: Okay.

18 MR. VANDER WEIDE: It is a device that's  
19 available for courts to use in other context. And one of the  
20 advantages that exists with respect to the common fund use of  
21 the percentage approach is because it does away with some of  
22 these issues about, Well, are you loading up your lodestar so  
23 you can run up higher numbers. I mean, Mr. Carter seems to  
24 think that we plaintiffs were guilty of that. And I want to  
25 speak to that in a moment. But the common fund framework of

1 cases provides that rationale, including even a case  
2 Mr. Carter cited, where the court mentioned the advantage of  
3 the percentage approach to determining attorneys' fees  
4 because it rewards attorneys for their efficiency, for their  
5 achievement. It doesn't reward them for running up a  
6 lodestar.

7 JUDGE MCGUNNIGLE: Okay. Thank you.

8 MR. VANDER WEIDE: On the piece of the -- a  
9 couple things I'd like to pick up on -- oh. On another  
10 point, on the multiplier for non-attorneys, that Judge  
11 Rosenbaum, you mentioned, I'm not quite sure I understand the  
12 problem with that. In our firm, we don't have that kind of  
13 thing, but I know in the firms with me that there are various  
14 kinds of people. A dollar is a dollar is a dollar at risk.  
15 These firms, in both the federal and state actions, had to  
16 put out real dollars, whether it's to a contract attorney,  
17 whether it's to a paralegal, whether it's to a financial  
18 analyst. These are real dollars you pay out. These firms  
19 paid out every week or every two weeks, just like defendants  
20 pay out to their people who work on the staff. But unlike  
21 defendants, obviously, in contingent-fee litigation, we're  
22 not getting dollars in when we send out a bill. There's no  
23 bill to send out. In fact, we may never get dollars in. All  
24 too often -- in my humble opinion and in my experience, all  
25 too often the dollars never come in. The case is lost; it's

1 dismissed; it's overturned, what have you. So the fact that  
2 the dollar is not for a professional lawyer as opposed to  
3 someone else, it's still a dollar at risk. And part of the  
4 rationale for contingent-fee lodestar and multipliers is to  
5 recognize that very real financial and economic risk that law  
6 firms that do contingent work take on in every case. There's  
7 no sure thing. Gotten the idea from Mr. Carter that, my  
8 gosh, when these two cases were filed, it was preordained.  
9 Somehow it was an inexorable result of the universe that we  
10 were going to stand here today with this kind of a  
11 settlement. It wasn't. When these cases were filed, they  
12 were among, I believe, the first of the backdated options  
13 cases. And although there was a Wall Street Journal article  
14 about it, and although the SEC said they were going to  
15 investigate UnitedHealth, there was absolutely no assurance,  
16 "A," that the SLC would find no merit or insufficient merit  
17 to proceed with these cases and instead dismiss them, which  
18 is what SLCs invariably do. As I laid out in my affidavit,  
19 this is a high-risk proposition. There were no assurances  
20 whatsoever. And the work that was done, I can tell you, was  
21 done in a very coordinated basis, from the standpoint of  
22 between the two groups of plaintiffs' counsel working on this  
23 case, chunks of documents -- and I laid this out in my  
24 affidavit. I was a little perplexed about why Mr. Carter  
25 said there was no evidence at all presented as to --

1 JUDGE MCGUNNIGLE: You're talking about  
2 paragraph 19 of your affidavit.

3 MR. VANDER WEIDE: Absolutely, your Honor.

4 JUDGE MCGUNNIGLE: Okay. I've read that.

5 MR. VANDER WEIDE: That is correct. And I laid  
6 out there exactly how Karl Cambronne's firm assigned chunks  
7 of documents. I did not review documents that his lawyers  
8 reviewed or that other people in my group reviewed. I  
9 reviewed a set. And the only time when we had common review  
10 was when somebody picked up a document that was particularly  
11 interesting and passed it around so that we would all know  
12 what we were doing, plus we had the weekly -- or at least  
13 scheduled. It didn't happen every week. If there was  
14 nothing to talk about, we didn't have a phone call -- or -- a  
15 conference call. So there was more coordination in this case  
16 among a bigger bunch of lawyers than I think I've ever seen  
17 in my experience. And I say that with all candor to the  
18 court. This was a very well managed litigation at both  
19 pieces.

20 The need for the document discovery while some  
21 of the discussions were going on. Well, as we said in our  
22 papers, it's a foolish plaintiff's lawyer who, at the moment  
23 of hearing settlement drop from the defendant's lips, bingo,  
24 you stop all work. You don't do that.

25 Judge McGunnigle, you will recall, I'm sure, in



1 your prior life, where you and I were privileged to be  
2 adversaries -- I was privileged to be adversaries with you in  
3 a case.

4 JUDGE MCGUNNIGLE: As was I, Mr. Vander Weide.

5 MR. VANDER WEIDE: Thank you, your Honor.

6 Where early on in that case, the defendants wanted to talk  
7 settlement -- which, of course, is always music to a  
8 contingent plaintiff's ears. And we did. But we didn't stop  
9 discovery. We continued to have our discovery -- very  
10 aggressive, some disputes -- even though in this particular  
11 case, the local newspaper editorialized that your client  
12 ought to pay up. But that didn't stop us from pursuing the  
13 case.

14 JUDGE MCGUNNIGLE: It only encouraged you, as I  
15 recall. Mr. Vander Weide, before you sit down, I do want to  
16 have you visit this issue of the value added of the ultra  
17 vires claim that you brought in the state court. And I  
18 understand that that -- at least I think that that's part of  
19 your argument as to the value to your particular  
20 contribution. I was going through some of my past orders,  
21 and a couple years ago, almost to the day, I guess, February  
22 6th, I issued an order where I addressed that issue and your  
23 reliance on the *Nuvani* case, and so forth. And I think it  
24 would be fair to say I expressed some skepticism.

25 MR. VANDER WEIDE: Yes, you did, your Honor.

1 JUDGE MCGUNNIGLE: Okay.

2 MR. VANDER WEIDE: As did, I might say, certain  
3 members -- one member of the SLC expressed skepticism with my  
4 argument in that regard.

5 Well, I think in terms of the value added, I  
6 would like to think that we added more value than just on the  
7 ultra vires case. But we raised that in the statutory  
8 context that was, I think, our unique contribution here. It  
9 was picked up later on by the feds. We happened to be ahead  
10 of them. While they were engaged in this squabble over who  
11 ought to run the case, we went forward and we filed the first  
12 motion for partial summary judgment. And we raised it there  
13 under 302A.165. I cannot read the SLC's mind, obviously.  
14 And the SLC report, as Judge Rosenbaum has noted on more than  
15 one occasion, is silent in terms of the precise findings.  
16 The SLC did pick up on the ultra vires concept, including  
17 under 302A.165 in its report. And also picked up on the  
18 notion in the *Envoy* case we cited as to what the difference  
19 is between void and voidable. We think that in this case  
20 particularly -- and I remember your Honor saying, "Well, you  
21 could use that in many cases." I don't think so. I think  
22 that in this case particularly this was a very, very unique  
23 and appropriate concept, for the reason that, yes, we had  
24 allegations in both cases that the conduct of these  
25 defendants was at variance, contradicted their disclosures in

1       their SEC filings. But that, at bottom, is a fraud case that  
2       can be dealt with under the federal securities laws. But  
3       what this also was which made this case both interesting and  
4       unique, I think, is the fact that they did this in violation  
5       of shareholder-adopted plans, shareholder-approved plans.  
6       And I remember at the preliminary hearing Judge Rosenbaum  
7       making the statement, something -- if I remember correctly --  
8       if I wrote it down right, "The shareholders do own the  
9       corporation. Sometimes that is forgotten." Well, that's  
10      what happened here. The shareholders who owned the  
11      corporation approved a plan, and the plan said -- it laid out  
12      specific requirements -- it happened to be dictated by the  
13      Internal Revenue Code. But they laid out these specific  
14      requirements about how stock options are to be granted,  
15      administered, and so forth. So that second piece made this  
16      conduct not just fraudulent in the conventional sense, it  
17      made it ultra vires. It was conduct that was inappropriate.  
18      Not only inappropriate, it was not only overreaching, and all  
19      the other good names that we lawyers can put on it -- unjust  
20      enrichment -- but it was also ultra vires. And the unique  
21      piece of being ultra vires is it substantially limits what  
22      the Board by itself can do with that kind of conduct.  
23      Because this, after all, was a shareholder-directed plan and  
24      a shareholder-authorized plan. You just can't willy-nilly  
25      ignore that. So we believe that pushing this in the state

1 action, where we happen to believe that the state court here  
2 -- corporate litigation ought to occur in state court. It  
3 certainly does in Delaware a lot, as we all know. That the  
4 state court action was a unique vehicle and a unique form to  
5 deal with this highly unique aspect of this case.

6 JUDGE MCGUNNIGLE: Thank you.

7 MR. VANDER WEIDE: I would just mention -- I  
8 don't want to go into how extraordinary and historic this is.  
9 We've all belabored the court with that in our papers. But I  
10 just wanted to note that this D & O diary that the defendants  
11 -- the objecting defendants -- and, by the way, just a word  
12 about the objecting defendants I think is in order here. Of  
13 these 17 objectors that we -- I'm not counting now the one  
14 that's in the federal case. But of these 17 objecting  
15 defendants, ten -- the company's -- not one of them, as I  
16 read Mr. Carter's paper on the cover -- ten of these are, or  
17 were, directors on whose watch this whole thing happened.  
18 Five of these objecting directors have left the Board and did  
19 so under less than optimal -- of these objecting directors.  
20 I'm not talking about the others, but I'm talking about these  
21 who are objecting -- did so under less than optimal  
22 conditions. Four of these objecting directors were on the  
23 compensation committee who had particular charge of what  
24 happened here in this case, which has been -- which was  
25 brought out by the derivative actions and laid before the

1 public and the court and, then, everything else followed from  
2 that. And the remaining five objecting directors are doing  
3 so in their individual capacities. They don't purport to be  
4 acting on behalf of the corporation. I think that's  
5 important to know in light of the fact that no other --  
6 again, aside from the one we have in the federal action -- no  
7 other institutional or individual shareholder has come  
8 forward to criticize either the settlement or the request for  
9 attorneys' fees.

10 JUDGE ROSENBAUM: Did any of those objectors  
11 themselves receive options which were backdated?

12 MR. VANDER WEIDE: Well, Mr. Hemsley did.

13 JUDGE ROSENBAUM: Okay.

14 MR. VANDER WEIDE: He's the prominent one who  
15 comes to mind. But the others were as well.

16 JUDGE ROSENBAUM: Okay.

17 MR. VANDER WEIDE: I'm only focusing on the  
18 directors now, your Honor. I'm not talking about the officer  
19 objectors here.

20 JUDGE ROSENBAUM: And I'm focusing on the  
21 directors also.

22 MR. VANDER WEIDE: Okay. Yes. Mr. Hemsley  
23 did. But other than that, I believe the answer would be no.

24 One last point I'd like to make in terms of the  
25 contribution of both actions and that is that, again, because

1 the SLC did not make findings, the conduct by the  
2 derivative -- the prosecution of these two cases by the  
3 plaintiffs in these two cases provided a crucial independent  
4 confirmation of not only the quality of the SLC's work but  
5 also the conclusions and recommendations. Because we were  
6 able to look at documents, although not in as efficient a  
7 manner as they could, we were given these things lock, stock  
8 and barrel literally, with an awful lot of barrel thrown in.  
9 By our reviewing the evidence that we were given, we were  
10 able to make an independent determination to support our  
11 conclusion that the settlement that's before the court -- our  
12 independent conclusion that the settlement that's before the  
13 court is entitled to the court's approval. And we did that  
14 as a result of all of this work, including doing all this  
15 work to be prepared for the possible eventuality that the SLC  
16 might find merit but we could not reach a settlement. I  
17 mean, just because settlement discussions started, they went  
18 on for some time and there was some pretty tough back and  
19 forth, as there always is in settlements of this caliber and  
20 of this magnitude, and there was never any assurance that  
21 this would happen. And there was an equal possibility that  
22 the SLC would conclude -- or -- we couldn't conclude a  
23 settlement with all these people, but the SLC concluded,  
24 nevertheless, there should be trials, as it happened in a  
25 couple of other backdated options cases, where the SLC has

1 concluded that -- did not reach a settlement but instead  
2 concluded that actions -- one or more actions should be  
3 pursued against one or more of the defendants. We had to be  
4 prepared for that possibility and that's, again, why the work  
5 -- the discovery work was an ongoing activity while the  
6 settlement discussion was going on.

7 JUDGE ROSENBAUM: Have you pretty much hit the  
8 high points?

9 MR. VANDER WEIDE: I think I have, your Honor.  
10 Thank you very much.

11 THE COURT: Mr. Carter.

12 MR. CARTER: Good morning, your Honors.

13 JUDGE ROSENBAUM: Yes, it is.

14 MR. CARTER: For about five more minutes, I  
15 believe. Mr. Cambronne mentioned, I think, a point that he  
16 thought ironic and, frankly, I find something ironic as well.  
17 This case started with arguments about excessive  
18 compensation, and this case is likely going to finish with  
19 arguments about excessive compensation. We think the  
20 settlement is historic. We join in the SLC's motion to have  
21 the settlement finally approved. But we believe the  
22 plaintiffs' fee request, in light of the unique circumstances  
23 of this case, is excessive. It's excessive to the extreme.  
24 Here both courts recognize the unique role of the Special  
25 Litigation Committee. It is important to note that in

1 response to our motion to you, Judge McGunnigle, and to you,  
2 Judge Rosenbaum, the Motion to Dismiss or Stay these actions,  
3 in both instances, the motion to stay was granted.

4 Mr. Vander Weide talked --

5 JUDGE ROSENBAUM: The Motion to Stay was mostly  
6 granted.

7 MR. CARTER: Well, your Honor, you did allow  
8 discovery.

9 JUDGE ROSENBAUM: I thought I did that.

10 MR. CARTER: But the Motion to Stay had to mean  
11 something, and I believe --

12 JUDGE ROSENBAUM: Well, I want to make sure  
13 that I was clear in my mind that you didn't think that I had  
14 stayed their work, because I didn't recall that that was  
15 exactly what I did.

16 MR. CARTER: But you expressly stayed the case  
17 in the order, and then you said, discovery can proceed. It  
18 was, I would say, a conundrum. It was not something --

19 JUDGE ROSENBAUM: I thought it was a Gordian  
20 knot. But that's okay. We'll get there.

21 MR. CARTER: Well, whatever word we want to  
22 use, your Honor, when you step back and you read that  
23 opinion --

24 JUDGE ROSENBAUM: Why don't we move past this  
25 argument. I'm okay on this one. We'll keep going.



1 MR. CARTER: The point is not that discovery --  
2 the point, as you recognized, your Honor, is the role of the  
3 SLC. Both courts recognized the primacy of the SLC, and that  
4 under Minnesota law, a duly constituted SLC has the power to  
5 determine whether claims go forward. And that, I agree, your  
6 Honor, happened in the context of discovery going forward in  
7 the federal case, but they did so in light of this clear  
8 statement, this clear recognition of the primacy of the  
9 Special Litigation Committee. Now, if you're plaintiffs'  
10 counsel and you receive both Judge McGunnigle's initial order  
11 and your Honor's order, I believe that in light of the shoes  
12 that they are wearing, the fiduciary duty they hold, the  
13 expectation that they would act in the best interests of the  
14 corporation, I believe, your Honors, that in that  
15 circumstance those orders and the ongoing SLC investigation  
16 should serve as a moderating influence on their discovery  
17 and on how they proceed. And one of the things, by the way,  
18 I heard from Mr. Cambronne was that he, at some point, came  
19 to the defense counsel and said, We won't do discovery if we  
20 can have a mediation. Well, one would, I would think, be  
21 able to draw an inference that if derivative counsel is  
22 making that sort of offer to the defense, that that means  
23 he's perhaps acting in a more prudent manner and not  
24 unleashing lawyers reviewing documents by the tens --  
25 spending tens of thousands of hours. One would assume that

1        what that means is he recognizes the SLC is proceeding,  
2        they're going to step back, and they're going to try to  
3        resolve this in a way which really does benefit the  
4        corporation.

5                    JUDGE ROSENBAUM: As you were protecting your  
6        clients' fisc, did you discuss that with him?

7                    MR. CARTER: Your Honor, I --

8                    JUDGE ROSENBAUM: Because such an assumption  
9        lightly thrown out would just wipe out maybe a third of their  
10       fees. If you were concerned to protect the treasury of the  
11       corporation -- I'm not going to invade the conversation --  
12       but did you take this subject up and write out an agreement,  
13       perhaps?

14                   MR. CARTER: No, your Honor, we did not write  
15       out an agreement.

16                   JUDGE ROSENBAUM: Oh.

17                   MR. CARTER: But I don't think it was --

18                   JUDGE ROSENBAUM: Oh.

19                   MR. CARTER: I don't think it was unreasonable  
20       for us to assume that, in the offer, to say that we're going  
21       to stand back and try to mediate, that what they really meant  
22       was, We'll mediate with you. We won't take depositions. We  
23       won't answer your discovery. We won't serve discovery on  
24       you. But we are going to hire contract lawyers, at several  
25       hundred dollars an hour, to review a database filed with

1 documents.

2 JUDGE ROSENBAUM: Okay.

3 MR. CARTER: Now, the other point that's  
4 important is that because the SLC did have control over these  
5 claims, it wasn't clear that, when all was said and done, the  
6 SLC, if it had decided claims were to proceed, would have  
7 even retained these lawyers. And that's important. Because  
8 they could have decided to hire Kelly & Berens, they could  
9 have decided to hire Munger, Tolle. And I think the  
10 plaintiffs pursuing the discovery as if, in fact, they had  
11 been retained, was done at their own risk, frankly.

12 JUDGE ROSENBAUM: That's what they did when  
13 they filed the case, was at their own risk.

14 MR. CARTER: I agree, your Honor. And, again,  
15 I go back to the fact that under the Minnesota statute and  
16 under Minnesota law, it's understood that that claim belongs  
17 to the corporation.

18 The other thing, your Honors, is that we  
19 believe that the plaintiffs have embellished their role and  
20 impact in this case. First, WilmerHale did not issue its  
21 report because of the derivative losses. That is simply not  
22 true. The repricing of the options on October 15th, 2006 had  
23 nothing to do with the plaintiffs' counsel. The corporate  
24 governance reforms announced on October 15th had nothing to  
25 do with the plaintiffs' counsel. The departure of

1 Dr. McGuire and Mr. Lubben, and the retirement of Mr. Spears  
2 had nothing to do with the plaintiffs' counsel. The  
3 injunction that precluded certain individuals from exercising  
4 options was not litigated. That was stipulated to.

5 And on the corporate governance issues, I do  
6 stand by the letter that I wrote to Mr. Cambronne. There's  
7 no question that we were having discussions with  
8 Mr. Cambronne and the federal plaintiffs. Mr. Vander Weide  
9 was not involved in those discussions. In the interim, we  
10 had a break and we had discussions then with the PSLRA  
11 plaintiffs. And the corporate governance piece ended up  
12 being part of the quid pro quo in the PSLRA action. There's  
13 no question that the derivative plaintiffs are beneficiary  
14 of the corporate governance changes, but they were not the  
15 cause of those changes. The SLC drove the settlement  
16 process; the plaintiffs did not. Indeed, the defendants  
17 would not have participated in the mediation if the  
18 defendants had not been approached by the Special Litigation  
19 Committee.

20 JUDGE ROSENBAUM: Isn't it fair to say they  
21 couldn't have?

22 MR. CARTER: Yes. Because the SLC --

23 JUDGE ROSENBAUM: The SLC became the Board --

24 MR. CARTER: That's absolutely --

25 JUDGE ROSENBAUM: -- and the corporation.

1 MR. CARTER: That's absolutely right, your  
2 Honor. That's absolutely right.

3 JUDGE ROSENBAUM: So you were a handcuffed  
4 volunteer.

5 MR. CARTER: Well, my point is that --

6 JUDGE ROSENBAUM: Let me put it this  
7 way. Somebody is nodding their head yes back there.

8 MR. CARTER: Your Honor, my point is that it  
9 wasn't the plaintiffs -- the plaintiffs coming to us and  
10 saying --

11 JUDGE ROSENBAUM: Let me ask you --

12 MR. CARTER: -- "let's settle" --

13 JUDGE ROSENBAUM: Let me swing over a little  
14 bit. Your brother raised --

15 MR. CARTER: -- was words in the wind.

16 THE COURT: Your brother raised, perhaps  
17 uncharming, but it might be an accurate point, that it was a  
18 wasting policy, that it was D & O policy.

19 MR. CARTER: Absolutely -- well, the D & O  
20 policy -- there was a hundred and seventy-five million  
21 dollars of D & O policy. That entire policy was devoted  
22 entirely to the PSLRA settlement. As your Honor knows, that  
23 matter was settled for 895 million dollars. The hundred and  
24 seventy-five million dollars was used for that case. In  
25 fact, there was no D & O coverage for the derivative actions

1 because of some of the exclusions in the policy.

2 JUDGE ROSENBAUM: Okay.

3 MR. CARTER: I do want to address the issue of  
4 cash.

5 JUDGE ROSENBAUM: I thought there was a subtle  
6 suggestions that it went to the attorneys' fees.

7 MR. CARTER: Which is not true.

8 JUDGE ROSENBAUM: Okay. That's fine.

9 MR. CARTER: On that point, the courts have  
10 said --

11 JUDGE ROSENBAUM: How fair an analogy is it to  
12 analogize the attorneys' fees of the derivative-action  
13 plaintiffs to the costs and fees of the SLC?

14 MR. CARTER: Your Honor, I think it is  
15 obviously a fair analogy. We've made it in our paper.

16 JUDGE ROSENBAUM: I know you think obviously it  
17 is.

18 MR. CARTER: And let me tell you why.

19 JUDGE ROSENBAUM: Perhaps you could draw it out  
20 a little more.

21 MR. CARTER: The SLC is investigating claims,  
22 they are interviewing witnesses. The SLC interviewed here  
23 dozens of witnesses, very much like a deposition. The SLC  
24 reviewed millions of pages of documents, much like the  
25 plaintiffs would do in prosecuting a claim. About the only

1 difference, I think, is that the SLC did not have subpoena  
2 power whereas the plaintiffs would because they're involved  
3 in litigation.

4 JUDGE ROSENBAUM: How many motions did you  
5 bring to oppose any action by the SLC?

6 MR. CARTER: Zero. Zero.

7 JUDGE ROSENBAUM: Okay.

8 MR. CARTER: And, your Honor, I think that if  
9 the plaintiffs were to provide the detail in their fee  
10 petition for all of the time they spent on motions, I think  
11 that that's time well spent because, obviously, we were  
12 before your Honors at various times and it was hard-fought.  
13 My issue is not with the motions. My issue is not with the  
14 time spent on the Minnesota Supreme Court. My issue relates  
15 to --

16 JUDGE ROSENBAUM: Probably not for the time --

17 MR. CARTER: -- something that the defense  
18 said.

19 JUDGE ROSENBAUM: -- that they spent advocating  
20 in these courtrooms.

21 MR. CARTER: That's absolutely right.

22 JUDGE ROSENBAUM: Okay.

23 MR. CARTER: Let me address the cash issue.  
24 There's a lot of confusion in the room about the cash issue.  
25 Mr. Vander Weide is absolutely wrong about, Well, the

1 restatement, and this and that. And it's all just cash and  
2 it's all got value. Remember, the restatement meant the  
3 company had to restate. They had to say, What we said before  
4 wasn't the case. And that was a negative when the company  
5 did a restatement. The settlement, right, the value of  
6 somebody giving up options --

7 JUDGE ROSENBAUM: I don't know if your brother  
8 over here thinks that it's sort of neutral.

9 MR. CARTER: Which brother are we pointing to?

10 JUDGE MCGUNNIGLE: Farthest away from you on  
11 the right.

12 JUDGE ROSENBAUM: Mr. Abadou.

13 MR. CARTER: The point on value that is  
14 attributed to options which are relinquished, that relates to  
15 the fact that if I'm an option holder and I could tomorrow go  
16 and exercise those options, and have a particular value  
17 associated with that exercise, I'm now giving those options  
18 back. So that's a value relinquished. The cash component of  
19 this deal -- it is significant -- but I want to make sure the  
20 court is clear in terms of what it is. Because there is some  
21 confusion in the record and, unfortunately, I think I may  
22 have been the cause of some of that confusion. On page eight  
23 of our brief there is a typo at the first bullet point in  
24 which we are describing Dr. McGuire's supplemental executive  
25 retirement and executive savings plan. And in the brief, it



1 says that was worth 499 million dollars. That should be 99.4  
2 million. The "4" is apparently right below the dollar sign  
3 on the keyboard. But the 99.4 we learned this morning is  
4 actually 91, because 8.1 of that 99.4 is actually stock. And  
5 that 8.1 --

6 JUDGE ROSENBAUM: I think --

7 MR. CARTER: Is that clear?

8 JUDGE ROSENBAUM: I think that's exactly what  
9 -- Mr. Cambronne referred to it as 91.3.

10 MR. CARTER: Okay.

11 JUDGE ROSENBAUM: And he did it this morning.

12 MR. CARTER: So 91.3 plus Mr. Lubben's  
13 contribution of cash of 20.5 --

14 JUDGE ROSENBAUM: By the way, I think it's fair  
15 to say -- and all of counsel will recall -- these numbers  
16 have been discussed at some length before. Whether or not  
17 they were -- however you put them in there. I recall on a  
18 number of occasions discussing those things, because they  
19 were all bound up in the injunction area.

20 MR. CARTER: Mr. Cambronne did misspeak when he  
21 was describing -- not to any fault of his own. But I just  
22 want it to be clear on the record that the total cash  
23 component is a hundred and eleven million point eight. We  
24 have analyzed the Iodestar and we believe that it is  
25 absolutely excessive on its face. And it includes a built-in

1 multiplier. They spent 40,000 hours, totaling 19 million  
2 dollars in fees. The first Complaint was filed the end of  
3 March, 2006. The settlements were signed in early December,  
4 2007. So that's a 20-month time period. In 20 months, the  
5 plaintiffs collectively billed 2,000 hours per month. That's  
6 ten full-time lawyers.

7 JUDGE ROSENBAUM: It's 20 man years. That's  
8 what their billing is.

9 MR. CARTER: That's right. Each and every  
10 month. Full-time. Full-time.

11 JUDGE ROSENBAUM: No. The 40,000 hours is 20  
12 man years.

13 MR. CARTER: The database that we --

14 JUDGE ROSENBAUM: That's if you're billing  
15 2,000 a year.

16 MR. CARTER: That's if you're billing 2,000...  
17 The database which the defendants provided -- this is with  
18 the millions of pages of documents -- wasn't provided until  
19 July of '07. So that means the bulk of the document review  
20 really could not start until that time period. So between  
21 July -- if you look at July to December and you think about  
22 the number of hours that would have had to have been devoted  
23 to review documents during that time period, it is  
24 awe-inspiring. Now, one of my fundamental objections to that  
25 is they had a searchable database. They had a database that

1 would allow them to write in, you know, whatever search term  
2 they wanted and come back get the result. Mr. Cambronne has  
3 taken issue with the defendants using 50 lawyers to review  
4 documents in order to produce that database. But it's  
5 important to note that the defendants have a different  
6 obligation when producing discovery. We are required to  
7 review every document for attorney-client privilege. We  
8 don't have a choice to just go and hunt-and-peck, especially  
9 in a case like this where, frankly, we had all of the servers  
10 from the Legal Department of UnitedHealth Group. I will also  
11 tell you that Dorsey & Whitney spent -- and we did all the  
12 document review -- we spent 34,000 hours reviewing documents.  
13 I will also tell this court that our total fees were less  
14 than eight million dollars. What that means is that our  
15 blended rate for doing that work was about \$230 an hour.  
16 Contrast that to the blended rate we see in their lodestar,  
17 which is 450 -- it depends on if we look at the state court  
18 action or the federal court action. But the federal action  
19 was \$451 per hour, and the state court action's blended rate  
20 was \$457 an hour.

21 JUDGE ROSENBAUM: So Dorsey spent eight million  
22 dollars on document review?

23 MR. CARTER: Eight million dollars, total, on  
24 the derivative action, your Honor.

25 JUDGE ROSENBAUM: Okay. Because I thought you

1       said on the document review.

2                       MR. CARTER: No. I appreciate the  
3       clarification.

4                       JUDGE ROSENBAUM: Okay.

5                       MR. CARTER: In the derivative action defending  
6       these claims -- and both your Honors know that we were lead  
7       counsel in the derivative action -- total eight million  
8       -- actually, it's 7.7.

9                       JUDGE ROSENBAUM: This is what we call "Close  
10      enough for government work," particularly this week.

11                      MR. CARTER: The other thing, your Honor, that  
12      I think is important is we have hourly rates presented which  
13      are not market. I know the court is aware of the *Domi no's*  
14      *Pizza* case and the *Guidant* case, where courts are capping  
15      attorney fees at \$400 an hour or rejecting rates for not  
16      being commensurate with the rate in the local market. A few  
17      examples -- and these are out of their petitions -- but we've  
18      got Mr. Johnson's rate at \$750 an hour. I'm not aware of any  
19      lawyer in Minnesota who charges \$750 an hour. Their  
20      associates were charging out between 395 and \$550 an hour.  
21      We've got the Ed Faber firm; partners were charging 680 to  
22      \$785 an hour. The Grant, Eisenhofer firm, 650 to \$845 an  
23      hour. Even Mr. Cambronne is seeking \$650 an hour which,  
24      again, is not the rate charged in this market for this type  
25      of work. Indeed, I did a little quiz of my co-counsel here,

1 and our blended partner rate among Mr. Mark, Mr. Hashmall,  
2 Mr. Gaskins and myself for this case ranged between 400 and  
3 \$480 an hour.

4 JUDGE ROSENBAUM: Have you examined the hourly  
5 rate paid to jurists?

6 MR. CARTER: Your Honor, I think you should  
7 impose your hourly rate upon this case. It might...

8 JUDGE ROSENBAUM: As long as I do it to all the  
9 lawyers, counsel.

10 MR. CARTER: I can tell you I think the hourly  
11 rates that they're attempting to charge are outrageous. And  
12 one of the problems we have here is that when you -- there is  
13 no mechanism for accountability. In other words, every  
14 month, I have to send a bill to a client and a client can  
15 pick up the phone and say, "Why are you spending thousands of  
16 hours on a document review? You're in the middle of a  
17 mediation that's about to be successful"; or, "Why are you  
18 summarizing deposition digests when the settlement was  
19 entered into?" Those are questions we have to ask every day.  
20 On the plaintiffs' side, we don't have any of that  
21 accountability. And I think that the Iodestar raises serious  
22 questions about that kind of staffing. For example, billing  
23 out contract lawyers at \$510 an hour frankly is gross. It's  
24 gross because you can hire a contract lawyer for 75 to a  
25 hundred dollars an hour in virtually every city in this

1 country and they'll review documents, wherever they are. And  
2 I can tell you that most large law firms do not pass on a  
3 margin for that, for precisely the reason which the serial  
4 objector identified in the brief, which is you're not dealing  
5 with health care and you're not -- and, frankly, clients  
6 demand it. They say, "If that's a direct expense, then we'll  
7 pay you that expense, just like we'll pay for photocopies or  
8 faxes. We don't expect you to build in a margin." And  
9 that's exactly what they've done in this fee petition. The  
10 state court plaintiffs take the position that they've  
11 properly staffed, but the partners have billed the vast  
12 majority of hours. And, again, if they were sending bills  
13 every month to any of us who were charged with monitoring how  
14 they proceed, you would say, "Well, wait a minute. Let's get  
15 some work down. Let's push it down. We don't want partners  
16 reviewing documents."

17 I want to address one of the things that  
18 Mr. Vander Weide said, which was, you know, This was high  
19 risk. We didn't know if we were going to get paid. This was  
20 bad. On October 15th, UnitedHealth Group -- which was  
21 aggressively remediating on its own -- issued that WilmerHale  
22 report. And that WilmerHale report included a fairly  
23 significant and fairly, I'll say, explosive statement and  
24 that was: "Stock options had been likely backdated." And  
25 both your Honors heard the plaintiffs come in and say, Look,

1       they said it's likely backdated.

2                       And there's something else that happened,  
3       Dr. McGuire left the company. Now, if the plaintiffs didn't  
4       know that they had a live one at that point, if the  
5       plaintiffs didn't know that they had a live one at that  
6       point, I'd be shocked. I hate to say this, but this is one  
7       of those unique circumstances where the contingency risk was  
8       low. On a related issue, the state court plaintiffs filed  
9       their lawsuit second, and it was a lawsuit that I believe was  
10      truly identical in every meaningful way to the lawsuit which  
11      was filed first in front of Judge Rosenbaum. Mr. Vander  
12      Weide said, Well, we brought great value because we had this  
13      unique theory and ultra vires. That theory was -- I'm not  
14      going to say rejected -- but, Judge McGunni gle, you did  
15      express skepticism.

16                     JUDGE MCGUNNIGLE: I think I used the word  
17      "skepticism."

18                     MR. CARTER: Yes. You were skeptical. I think  
19      Mr. Vander Weide admitted that the SLC was skeptical.

20                     JUDGE MCGUNNIGLE: In a sense, though, that  
21      confirms his argument that he was at risk, if the court is  
22      skeptical about a cause of action.

23                     MR. CARTER: Well, the one thing I'd say, your  
24      Honor, is we don't want to live in a world where we encourage  
25      what I'm going to call "tag-along lawsuits." We don't want

1 to live in a world where somebody sees, Oh, there's one in  
2 federal court in Minnesota. I'm going to file one in state  
3 court and see if I can keep it alive; or, I'm going to go  
4 file one in Delaware; or, I'm going to go file one -- and I  
5 frankly believe that's what we have in the state court  
6 action. The state court action's discovery was stayed. It  
7 was only lifted by stipulation in order to allow the  
8 plaintiffs to get comfortable with the settlement which was  
9 about to be entered into. That's why that discovery was  
10 lifted. There were no depositions -- in fact, just to be  
11 clear -- and I think it's clear -- no lawyer in this room, in  
12 the derivative action, took a single deposition or attended  
13 any interview with the SLC. That did not happen.

14 Mr. Vander Wei de also mentioned, Well,  
15 Mr. Carter represents some of the defendants. And last I  
16 checked, we have the right to object to attorneys' fees, and  
17 I do represent the current chief executive officer of  
18 UnitedHealth Group. And paying lawyers is a function of  
19 management. And sitting in the back of the courtroom are two  
20 deputy general counsels from UnitedHealth Group, and if the  
21 court wants to get UnitedHealth Group's position, I'm sure  
22 UnitedHealth Group would provide that.

23 JUDGE ROSENBAUM: I trust that they are  
24 speaking as a corporation through their counsel.

25 MR. CARTER: On the common-fund point, Mr. Van



1       Weide has not cited cases that stand for the proposition that  
2       in a derivative case a common fund is appropriate. Courts  
3       don't approach derivative actions in that way, for lots of  
4       good reasons. Because you asked about, Well, if I can value  
5       something, should a common fund be applied? The problem with  
6       that is someone is always going to be trying to value  
7       whatever consideration might exist in a derivative case and,  
8       then, the company is going to find itself having to pay out  
9       cash to lawyers for something that maybe perhaps didn't  
10      really bring in the kind of cash we're talking about. And  
11      Mr. Vander Weide -- the thing that's shocking to me is that  
12      the company's recovered a hundred and eleven million dollars.  
13      The plaintiffs want to recover more than 50 percent of that.  
14      More than half. The lion's share of that. There's a policy  
15      issue here. Courts, under Minnesota law, are empowered to  
16      create Special Litigation Committees to determine whether  
17      claims should be pursued. And those committees tend to be  
18      formed after a lawsuit or a sabre-rattling letter has been  
19      sent to the Board. If courts grant these kind of huge awards  
20      to lawyers, what that means, I believe, is that you will have  
21      situations in which Special Litigation Committees are trying  
22      to do their jobs and determine and decide whether a claim  
23      should be brought.

24                   JUDGE ROSENBAUM: Did you brief this subject?

25                   MR. CARTER: No, I did not.

1 JUDGE ROSENBAUM: I didn't think so. This  
2 little darling must have popped into your mind just last  
3 night.

4 MR. CARTER: Your Honor, I've been in trial for  
5 three weeks. So, unfortunately, I may have had some new  
6 ideas along the way.

7 JUDGE ROSENBAUM: Excellent.

8 MR. CARTER: But, in any event, the SLCs need  
9 to be given -- they have the power, they have the authority.  
10 If we live in a world where, at the same time that they're  
11 considering these claims, you've got plaintiffs' lawyers  
12 fomenting litigation, hoping that they're going to be able to  
13 come in --

14 JUDGE ROSENBAUM: "Fomenting litigation"? Were  
15 they the ones who were issuing -- you've got a board of  
16 directors that issued those shares. They didn't foment that.  
17 Why don't you move to a different argument.

18 MR. CARTER: Your Honor, my point is --

19 JUDGE ROSENBAUM: Finish your point.

20 MR. CARTER: -- it seems to be entirely  
21 inconsistent --

22 JUDGE ROSENBAUM: I understand.

23 MR. CARTER: -- entirely inconsistent for the  
24 Special Litigation Committee to decide whether or not a case  
25 is worth investing in at the same time you're going to have

1       plaintiffs' lawyers deciding, Look, the gates are open.  
2       Let's go hire a bunch of contract lawyers to review every  
3       document known to human kind because some day we'll be able  
4       to come in and make a presentation to this court.

5               I ask both courts to carefully scrutinize the  
6       fee petitions and not just these summaries. I think this is  
7       the kind of thing that requires a month-by-month review.  
8       Because I think the courts are going to find that there's a  
9       lot of fat in those. And I do believe that the amount billed  
10      by the SLC, the amount billed by Dorsey & Whitney in  
11      defending these claims is relevant and ought to be considered  
12      as a benchmark. And if the courts, for whatever reason, are  
13      inclined to consider a multiplier, I believe that the  
14      Iodestar itself that's been presented that has the huge  
15      hourly rates and the huge number of hours includes that  
16      multiplier. Thank you.

17             JUDGE ROSENBAUM: Thank you, counsel.

18             JUDGE McGUNNIGLE: Thank you, counsel.

19             JUDGE ROSENBAUM: Anybody else?

20             MR. HASHMALL: I have no argument, your Honor.

21             JUDGE ROSENBAUM: All right.

22             MR. MARK: Your Honor, I have no argument. But  
23      we do obviously support the settlement.

24             MR. GASKINS: Your Honor, Steve Gaskins for  
25      Dr. McGuire. We do support the settlement. I would like to

1 say one thing, if I can, from here, because it's very brief.  
2 The one thing I would say I have no dog in the Iodestar fight  
3 or the hours, nothing like that. But I think that Karl  
4 Cambronne, particularly, aided the settlement process early  
5 on by pressing and pushing for mediation and I think that  
6 that value should be recognized.

7 JUDGE ROSENBAUM: I thank you.

8 JUDGE MCGUNNIGLE: Thank you, counsel.

9 JUDGE ROSENBAUM: We'll take it under  
10 advisement.

11 (Court stood in recess at approximately 12:10  
12 p.m., on February 13th, 2009).  
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1 STATE OF MINNESOTA)

2 )ss.

3 COUNTY OF HENNEPIN)

4  
5 I, Ronald J. Moen, Official Court Reporter for the  
6 United States District Court, CSR, RMR and a Notary Public in  
and for the County of Hennepin, in the State of Minnesota, do  
hereby certify:

7 That the said proceeding was taken before me as an  
8 Official Court Reporter, CSR, RMR and a Notary Public at the  
said time and place and was taken down in shorthand writing  
by me;

9 That said proceeding was thereafter under my direction  
10 transcribed into computer-assisted transcription, and that  
11 the foregoing transcript constitutes a full, true and correct  
report of the transcript of proceedings which then and there  
took place;

12  
13 That I am a disinterested third person to the said  
14 action;

15 That the cost of the original has been charged to the  
16 party who ordered the transcript of proceedings, and that all  
parties who ordered copies have been charged at the same rate  
for such copies.

17 That I reported pages 1 through 61.

18 IN WITNESS THEREOF, I have hereto subscribed my hand  
19 this 6th day of March, 2009.

20  
21 s/ Ronald J. Moen  
22 RONALD J. MOEN,  
Official Court Reporter,  
CSR, RMR  
23  
24  
25